

Application No. 09/729,888
Amendment Dated March 16, 2004
Reply to Office Action of January 13, 2004

REMARKS/ARGUMENTS

By this Amendment, Claim 9 is canceled, Claims 10-12 and 14 are amended and Claims 19-20 are added. Claims 10-14 and 19-20 are pending.

The Examiner's courtesy in granting interviews to Applicant's representative on January 29, 2004 and March 2, 2004 is gratefully acknowledged. Applicant's separate record of the substance of the interview is incorporated into the following remarks.

The Examiner sets forth that Claim 9-14 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner believes that in Claim 9-14 it appears that a portion (a body segment and an uninvolved body segment) are being positively claimed. The Examiner believes that it is improper to claim any portion of the body.

Accordingly, device Claim 9 has been rewritten as method Claim 9, wherein only method steps performed upon body segments are claimed, rather than the body segments themselves.

The Examiner also sets forth that Claims 9 and 14 are rejected under 35 U.S.C. §102(b) as being anticipated by Keeton. According to the Examiner, Keeton discloses in Figures 3-4 a pre-surgical alerting device comprising a strip 40, a visually perceivable indicator 42, temporary attachment means (pressure sensitive covering by a backing 35) and a companion label 41.

Additionally, the Examiner sets forth that Claims 10-13 are rejected under 35 U.S.C. §103(a) as being unpatentable over Keeton in view of Zinreich. According to the Examiner, Zinreich discloses in Figures 3-4 a pre-surgical altering device substantially as claimed that further comprises

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a backing 35. However Keeton does not disclose the attachment means being an adhesive, the strip being perforated or the words on the strip being "no cut." Zinreich teaches in Figure 5c a pre-surgical alerting device comprising strips (16, 18 and 20) having an attachment means that is adhesive (Col. 3, lines 33-34) and the strips are perforated (Col. 3, lines 29-30). According to the Examiner, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the strip disclosed by Keeton could be fabricated with an adhesive for an attachment means and be perforated as taught by Zinreich. The Examiner sets forth that the adhesive would be used to attach the strip to user's body and that the perforations would be used to allow the strip to breathe. The Examiner believes that any words could be printed on the strip, and thus, "No Cut" does not provide any novelty over the other prior art.

Keeton teaches surgical clothing and labeling means for protection of a patient entering surgery. The system taught by Keeton includes both a gown and labels. This gown is made of a disposal material so that the gown as a whole can remain in place on the patient while portions thereof are cut away to allow required access to the body. The labels taught by Keeton designate an area of an intended surgical operation. Zinreich teaches radiation therapy skin markers which are used to delineate a radiation therapy portal area on a patient's skin surface. The markers taught by Zinreich geometrically define the area to be radiated by delineating corners, and defining isocenters, geometries, set-up point markers, lengths and intersections of the area to be radiated. Thus, the markers taught by Zinreich designate an area of an intended procedure. Conversely, the Applicant's

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invention is a device for selecting an unintended body segment and indicating that the unintended body segment is not to be involved in a surgical procedure.

Therefore, the Applicant's new Claim 19 sets forth a method for providing a pre-surgical warning for use on a body having an involved body segment to be involved in a surgical procedure and a plurality of uninvolved body segments which are not to be involved in the surgical procedure, including the steps of selecting an uninvolved body segment from the plurality of uninvolved body segments to provide a selected uninvolved body segment and placing a label on the selected uninvolved body segment to provide a labeled selected uninvolved body segment, the label having a superior side and an inferior side. The method also includes providing a visually perceivable indicator on the superior side of the label to warn against surgery on the labeled selected uninvolved body segment, and attaching the inferior side in the vicinity of the labeled selected uninvolved body segment to warn against surgery on the labeled uninvolved body segment in a manner wherein the label is removable after the surgical procedure.

Keeton does not provide a visually perceivable indicator to warn against surgery on a labeled selected uninvolved body segment. Rather, Keeton teaches labeling the involved body segment rather than the uninvolved body segment.

As previously described, cancelled independent device Claim 9 has been rewritten as new independent method Claim 19. In so doing, the Applicant has avoided positively claiming any body segments. Only method steps being performed on body segments are now claimed by the Applicant.

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For at least the reasons set forth above, it is respectfully submitted that the above-identified application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are respectfully requested.


Should the Examiner believe that anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.

March 16, 2004

Please charge or credit our Account
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entry and/or ensure consideration of
this submission.

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